AS TO THE ADMISSIBILITY OF

Application No. 17366/90
by G.H.
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 19 February 1992, the following members being present:

MM.J.A. FROWEIN, President of the First Chamber
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
SirBasil HALL
Mr.C.L. ROZAKIS
Mrs.J. LIDDY
Mr.M. PELLONPÄÄ

Mr.M. de SALVIA, Secretary to the First Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 8 October 1990 by G.H. against the United Kingdom and registered on 26 October 1990 under file No. 17366/90;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1953. She resides in Luton. She is represented by Messrs. Singh and Ruparell, solicitors, practising in London. The facts of the case as submitted by the applicant may be summarised as follows:

The applicant was born in Uganda. She went to live in India in 1971. On 20 July 1979 she was given indefinite leave to reside in the United Kingdom.

The applicant's husband ("K.") is an Indian citizen, born in 1957. He resides in India.

The applicant and K. (who are first cousins) were engaged in July 1979 when the applicant was in the United Kingdom.

On 6 September 1979 K. applied to the Office of the British Deputy High Commissioner, Bombay ("the BDHC, Bombay") for an entry clearance to go to the United Kingdom to marry and settle with the applicant.

In July 1981 the applicant and K. were interviewed in connection with K.'s application.

On 14 July 1982 K.'s application was refused by an Entry Clearance Officer. An adjudicator dismissed K.'s appeal against that refusal. The adjudicator stated, inter alia, that he had no doubt that the proposed marriage was primarily for the purpose of obtaining K.'s

entry into the United Kingdom. His written determination was sent by post on 21 February 1983.

On 16 June 1983 the President of the Immigration Appeal Tribunal refused K. leave to appeal against the adjudicator's determination.

On 24 October 1986 K. applied to the BDHC, Bombay for a visa with a view to admission to the United Kingdom for marriage to the applicant and settlement thereafter.

On 18 September 1987 the application was refused by a visa officer. An adjudicator dismissed K.'s appeal against that refusal. His determination was sent by post on 18 August 1989. The adjudicator concerned held as follows:

"In my view the circumstances indicate, on balance of probabilities, that the applicant's primary purpose in contracting the marriage is to secure his entry to the United Kingdom."

On 9 November 1989 the Immigration Appeal Tribunal refused K. leave to appeal against the adjudicator's determination.

On 24 March 1990 the applicant left the United Kingdom for India.

On 7 April 1990 the applicant and K. were married in India.

On 26 May 1990 a doctor practising in India certified that a temperate climate is not suitable for the applicant's health. On 17 February 1991 the applicant returned to the United Kingdom. The applicant has since given birth to a child.

The applicant states that her place of employment and her entire family are in the United Kingdom and that she has close and strong links in the United Kingdom and that she is entitled to maintain these links.

COMPLAINTS

The applicant complains that the refusal to allow her husband to join her in the United Kingdom constitutes a violation of Article 8 of the Convention.

THE LAW

The applicant complains under Article 8 (Art. 8) of the Convention of the refusal to allow her husband to enter the United Kingdom.

Article 8 (Art. 8) provides:

1. "Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that the applicant's solicitors first wrote to the Commission on 27 November 1989 and did not provide further

information until 6 October 1990 despite being informed by letter of 11 December 1989 that failure to return an application form within 6 weeks might affect the date of introduction.

The Commission has therefore examined the question of the date of introduction of the present application.

In accordance with its established practice, the Commission considers the date of the introduction of an application to be the date of the first letter indicating an intention to lodge an application and giving some indication of the nature of the complaint. However, where a substantial interval follows before an applicant submits further information as to his proposed application, the Commission examines the particular circumstances of the case in order to decide what date shall be regarded as the date of introduction with a view to calculating the running of the six-month period set out in Article 26 (Art. 26) of the Convention (see e.g. No. 4429/70, Dec. 1.2.71, Collection 37 p. 109).

The Commission has regard in this context to the purpose of the six-month rule which is to promote security of the law, to ensure that cases raising issues under the Convention are dealt with within a reasonable time and to protect the authorities and other persons concerned form being under uncertainty for a prolonged period of time.

The Commission's case-law also establishes that it would be contrary to the spirit and the aim of the six-month rule set out in Article 26 (Art. 26) if, by any initial communication, an application could set into motion the proceedings under the Convention and then remain inactive for an unexplained and unlimited length of time (see e.g. No. 10626/83, Dec. 7.5.85, D.R. 42 p. 205). The Commission has constantly rejected applications where an applicant submitted an application more than six months after the date of the final decision when there were no special circumstances suspending the running of this period. It would be inconsistent with the aim and purpose of the six-months rule to deviate from this rule in a situation where an application has been introduced under Article 25 (Art. 25) of the Convention within six months from the final decision, or act complained of, but thereafter not pursued.

In the present case the Commission recalls that almost a year passed before the applicant resumed correspondence with the Commission. The applicant's solicitor explains that the delay was because the applicant went to India during this period. The Commission notes however that the applicant left for India on 24 March 1990 and returned on 17 February 1991 and that no explanation is given for the failure to pursue the application in the months preceding her departure. Further, her absence until February 1991 did not apparently hinder the applicant's solicitor providing further information concerning her complaints on 6 October 1990.

In light of these circumstances, notwithstanding the applicant's initial letter of 29 November 1989, the Commission considers the date of introduction of the application to be 6 October 1990. Since the final decision concerning the applicant's complaints was the decision of the Immigration Appeal Tribunal refusing leave to appeal which was dated 9 November 1989, it follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First ChamberPresident of the First Chamber

(M. de SALVIA)(J.A. FROWEIN)